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1 **U.S. PATENT & TRADEMARK OFFICE**
2 **IN THE OFFICE OF PETITIONS**

3 In Re: **Patent No. 6221836**
4 Issue Date: April 24, 2001
5 Application No.: 09/213,968
6 Filing Date: December 17, 1998

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7 First Named Inventor: Paxton Beale

OFFICE OF PETITIONS

8 Assignee of All Right and Interest: Paxton Beale

9 **PETITION FOR ACCEPTANCE OF UNAVOIDABLY**
10 **DELAYED MAINTENANCE FEES PURSUANT TO**

11 **35 U.S.C. § 41(c) (1) and 37 CFR 1.378(b)**

12 Petitioner herein, Paxton Beale, the first named Inventor and the Assignee of all Right
13 and Interest in U.S. Patent 6,221,836, hereby petitions for relief in this matter, and acceptance of
14 a late payment of the maintenance fee for US Patent 6,221,836, pursuant to 37 CFR 1.378 (b) on
15 grounds of unavoidable delay, in spite of the fact that Petitioner exercised reasonable care and
16 prudent diligence in the maintenance fo the patent.

17 **35 U.S.C. § 41(c) (1) states that:**

18 "The Commissioner may accept the payment of any maintenance fee required by
19 subsection (b) of this section .. after the six-month grace period if the delay is shown to
20 the satisfaction of the Commissioner to have been unavoidable."

21 **37 CFR 1.378(b) (3) states that any petition to accept delayed**
22 **payment of a maintenance fee must include:**

23 "A showing that the delay was unavoidable, since reasonable care was taken to ensure
24 that the maintenance fee would be paid timely, and that the petition was filed promptly
25 after the patentee was notified of, or otherwise became aware of, the expiration of the
26 patent. The showing must enumerate the steps taken to ensure timely payment of the
27 maintenance fee, the date, and the manner in which patentee, became aware of the
28 expiration of the patent, and the steps taken to file the petition promptly."

In Re: Beale Petition/ 37 CFR 1.378

Petition Re: PAT 6.221,836

The Commissioner May Accept Late Payment of Fees

Pursuant to 35 USC 41(c) (1), the Commissioner may accept late payment of the maintenance fee if the delay is shown to the satisfaction of the Commissioner to have been "unavoidable;"

The Standard For Acceptance

Acceptance of late payment of a maintenance fee is considered under the same standard as that for reviving an abandoned application under 35 USC 133, because 35 USC 41(c) (1) uses the identical language, i.e. "*unavoidable delay*." Ray v. Lehman, 55 F.3d 606, 608-09, 34 USPQ2d 1786, 1787 (Fed. Cir. 1995) (quoting *In re Patent No. 4,409,763*, 7 USPQ2d 1798, 1800 (Comm'r Pat. 1988)).

Reasonably Prudent Person

Decisions on reviving abandoned applications have generally adopted the "reasonably prudent person" standard in determining, if the delay in responding to an Office action was unavoidable. *Ex parte Pratt*, 1887 Dec. Comm'r Pat. 31, 32-33 (Comm'r Pat. 1887) (the term "unavoidable" "is applicable to ordinary human affairs, and requires no more or greater care or diligence than is generally used and observed by prudent and careful men in relation to their most important business"); *In re Mattullath*, 38 App. D.C. 497, 514-515 (D.C. Cir. 1912); and *Ex parte Henrich*, 1913 Dec. Comm'r Pat. 139, 141.

Case by Case Analysis

In addition, decisions on revival are made on a "case-by-case basis, taking all the facts and circumstances into account." *Smith v. Mossinghoff*, 671 F.2d 533, 538, 213 USPQ 977, 982 (D.C. Cir. 1982).

25 'Thus, Petitioner, by establishing to the satisfaction of the Commissioner, that the delay
26 was unavoidable, despite Petitioner's exercising the due care observed by prudent and careful
27 person, in relation to their most important business, (See Pratt, *supra*.) under the specific facts of
28 Petitioner's case, is entitled to have the fees submitted herewith accepted and the patent reinstated.

1 **I. PROCEDURAL FACTS**

2 Petitioner is an inventor and assignee of all rights and interest in and to U.S. Patent
3 6,221,836 issued April 24, 2001 ("the '836 patent") and also a second patent issued to
4 Petitioner, US Patent 5,756,469 issued May 26, 1998 (the '469 patent), which also bears on this
5 matter.

6 The four-year maintenance fee for the '469 patent, which issued prior to the '836 patent,
7 was timely paid by Petitioner's attorney and agent for both patents on March 12, 2002. This
8 first maintenance fee for the '469 patent was paid by Petitioner's attorney, Don Nickey, a
9 Registered Patent Attorney, (Nickey) using Petitioner's funds left on account with Nickey for this
10 specific purpose and ongoing matters concerning Petitioner's patents. (See Beale Declaration
11 submitted herewith).

12 The four-year maintenance fee for the '836 patent, which issued subsequent to the '469
13 patent, was not paid by Nickey from funds left in trust with Nickey, in spite of verbal assurances
14 from Nickey to Petitioner that the four-year maintenance fee for the '836 patent and the eight-
15 year maintenance fee for the '469 patent were being paid. (See Beale Declaration).

16 Petitioner only became aware of Nickey's misrepresentation late in 2008, early 2009
17 when Petitioner, concurrent with negotiations to license the '836 patent, attempted to contact
18 Nickey to make sure that Nickey was scheduled to pay the last maintenance fee on the '469
19 patent and the second maintenance fee on the '836 from funds on account with Nickey. The
20 payment for the '836 patent was due prior to April 24, 2009. At the same time, Petitioner
21 learned the intervening fees had not been paid and the patents had lapsed.

22 Petitioner contacted Registered Patent Attorney Donn Harms, soon thereafter and
23 requested this Petition to Accept Late Payment of Maintenance fees on the '836 patent and
24 conditionally on the '469 patent, be submitted. Petitioner required sufficient time to investigate,
25 contact associates of Nickey, and find old records in storage to provide his attorney with
26 supporting documents for submission with this petition.

27
28

II. LEGAL STANDARD

To maintain a patent in force, it is required that maintenance fees be paid to the Patent Office, at intervals of 3 ½ years, 7 ½ years and 11 ½ years from issuance, which fees may be paid by the Patentee or any person acting on behalf of the patentee. 37 CFR 1.20(e); 1.362(d), (e) (grace period); 1.366 (submission). Failure of the Patent Office to properly receive requisite maintenance fees results in the expiration of the subject matter patent. 37 CFR 1.362(g).

The applicable law as noted above, does permit acceptance of delayed payment after expiration, and reinstatement of patents. Said reinstatement lies within the inherent power of the Commissioner to grant upon satisfactory showing by petition that, despite the exercise of reasonable care by the patentee, the maintenance fee, unavoidably, was not paid. 37 CFR 1.378; 35 USC § 41(c)(1). The Commissioner's exercise of discretion is to be determined upon a case by case basis, guided and balanced by "taking all the facts and circumstances into account." *Smith v. Mossinghoff*, 671 F.2d 533, 538; 213 USPQ 977 (D.C. Cir. 1982). The balancing of the facts and circumstances is based upon the reasonable and prudent person standard. *Ray v. Lehman*, 55 F.3d 606, 608 (Fed. Cir. 1995) citing to *In Re: Mattullah*, 38 App. D.C. 497, 514-15 (D.C. Cir. 1912). The historic *Mattullah* standard, a standard of liberal interpretation and application, continues to be embraced as shown by the recent *Ray* decision by the Federal Circuit.

III. PETITIONER EXERCISED REASONABLE DILIGENCE AND CARE TO INSURE THE MAINTENANCE FEES WERE PAID

Petitioner exercised reasonable care to insure that the maintenance fee would be paid timely. The '836 patent was prosecuted by Attorney Don Nickey as was the '469 patent. Mr. Nickey and Petitioner had a working relationship as well as a personal relationship over a number of years. (Beale Declaration A).

Upon the issuance of both the '469 patent and the '836 patent, Attorney Nickey forwarded the ribbon copy to Petitioner along with a conventional letter regarding future MAINTENANCE fees being due on each patent. (Beale Declaration A)

1 Petitioner, used due care when informed of upcoming maintenance fees on the '469 and
2 '836 patents to insure payment of those future fees. To that end, Petitioner made written
3 notations within his calender books which Petitioner employed to track business and personal
4 matters for years prior to, and subsequent to the notices of fees due from Nickey.

5 As was his normal business practice, if a date of importance fell outside a calendar year
6 covered by an individual, yearly, scheduling book, a notation for events in future years, were
7 placed at the end pages of the current year's written calender. Upon commencement of use of
8 the subsequent year's calender, the events were entered on their due date, or placed at the end of
9 the calender for inclusion in subsequent years on the proper due date. The system served
10 Petitioner well for many years.

11 Attorney Nickey, who originally worked with the firm of Stanley and Gilchrist, and upon
12 leaving for a job with Cardinal Health, agreed to handle Petitioner's patent prosecution and
13 maintenance fees as an accommodation to Petitioner because of Nickey's unique knowledge of
14 the subject matter of petitioner's patents. This was discussed in phone calls because of the
15 geographic distance between Nickey and Petitioner. The scope of Nickey's representation, and,
16 the fact that at least \$10,000 of Petitioners funds was in trust with Nickey, was confirmed in a
17 letter from Petitioner to Nickey on September 1, 2002. (Exhibit B).

18 Pursuant to Petitioners long-used date book system of docketing future events, and "to
19 do" events by hand, and his written notations entered in the 2004 date book regarding due
20 maintenance fees, Petitioner exercised DILIGENCE by checking with attorney Nickey in
21 November of 2004 and January of 2005 concerning the maintenance fees due in 2004-2005. The
22 inquiries concerned Petitioner's notations that fees would be due for both the first maintenance
23 fee for the '836 patent, and the second maintenance fee for the '469 patent, which was in the six-
24 month grace period at that point. (Calender pages Exhibit C) (Beale Declaration A) (Letters of
25 Nov 30 2004, Exhibit D) (Letters of Jan 7 2005, Exhibit E)

26 Petitioner, who had been hospitalized and convalescing from a life-threatening systemic
27 infection for almost all of 2004, wrote to Nickey in November of 2004, confirming a November
28 telephone call in November of 2004 with Nickey. The letter confirmed a phone discussion where

1 Petitioner had informed Nickey of his life threatening illness and Petitioner's continued inability
2 to handle any business matters, and Petitioner's continued reliance on Nickey to monitor all
3 patent matters in a timely fashion, including the payment of MAINTENANCE fees, noted in the
4 letter of 2002. (Letter to Nickey November 2004, Exhibit D).

5 Attorney Nickey was again telephoned by Petitioner in January of 2005 when Petitioner
6 noticed the notations about the patent MAINTENANCE fees written in his date book at the end
7 of the 2004 date book. Petitioner made the telephone call to Nickey, who again confirmed he
8 was handling both matters, as he had indicated in November, and told petitioner not to worry.
9 Petitioner confirmed this telephone call through a short note in January of 2005 to Nickey and
10 the fact that Nickey was "riding herd" on the patents, and that Nickey indicated he would pay
11 both maintenance fees from the majority of funds remaining in the \$10,000 of Petitioner's funds
12 in Nickey held in trust. (Beale Declaration A) (Calender pages Exhibit C) (Letter of January
13 2005, Exhibit E).

14 Because Nickey had always performed his duties with regard to prosecuting the '836 and
15 '469 patents, and because Nickey had already paid the first maintenance fee on the '469 patent as
16 promised, and because Nickey had an excess of funds from Petitioner in trust, to pay both fees,
17 and because Petitioner in two separate phone conversations promised to pay the two fees due,
18 Petitioner reasonably believed, that Nickey, a Registered Patent Attorney, would accomplish the
19 tasks of which Petitioner reminded him in January of 2005 and November of 2004.

20 Petitioner, still extremely ill and in ongoing medical recovery from the series of severe
21 infections occurring throughout 2004, was confident that his patent renewals were taken care of
22 by the discussions with Mr. Nickey and Nickey's past flawless performance. Having already
23 checked with Mr. Nickey twice, and being told by Nickey twice that Nickey was "riding herd"
24 on the patents, Petitioner reasonably believing the maintenance fees were being paid timely, was
25 relieved and compelled to concentrate on recovery from his severe illness.

26 Petitioner continued to recover in 2005 confident in the fact that Nickey, who had
27 Petitioner's funds to pay the fees, and who had personally indicated in November of 2004 and
28 January of 2005 he would pay the fees, and who had always performed his duties in the past,

1 would in fact pay the first fee on the '836 patent before the time to do so elapsed in April of
2 2005, and would pay the second fee on the '469 patent, before the term to do so without a
3 penalty elapsed in November of 2005.

4

5 **IV. THE FAILURE TO PAY THE FEES WAS UNAVOIDABLE**

6 Petitioner's exercising the due care observed by prudent and careful person, in relation to
7 their most important business, thus:

- 8 Exercised reasonable and due care by docketing in his date book calendars, the future
9 maintenance fees for both the '469 patent and the '836 patent;
- 10 By placing sufficient funds in trust with Nickey, a Registered Patent Attorney, to pay all
11 such fees when due;
- 12 By checking in with Nickey numerous times, based on the notations in his date books, to
13 ascertain that Nickey would use those funds to pay the MAINTENANCE fees.
- 14 By sending follow-up written communications to Nickey concerning Nickey's
15 telephonic confirmation that he was "riding herd" on the patents and
16 was going to pay the maintenance fees from trust funds.

17 Petitioner reasonably relied on Nickey to pay the fees due because:

- 18 Nickey had always performed perfectly in the past during a multiple year
19 relationship; and
- 20 Nickey had paid the first fees due on the '469 patent as promised;
- 21 Funds were in possession of Nickey to pay the fees.

22 Petitioner's reliance was justified since:

- 23 Nickey had already paid the first fees due on the '469 patent as promised;
- 24 Nickey was Registered by the U.S. Patent Office;
- 25 By the fact that, on numerous occasions, when queried about the fees coming due by
26 Petitioner by phone, Nickey had promised to employ funds from Petitioner he held in
27 trust to pay the fees.

28

1 Petitioner, who was suffering from a life threatening illness and was struggling to recover
2 from such for most of 2005, had no reason to check on the patent fees further until 2008, when
3 he finally was able to discuss potential licenses with a potential licensee. The dates for the next
4 due maintenance fees on the '836 patent, would not have expired until April of 2009, had
5 Nickey paid the first maintenance fee as promised. The date to pay the third maintenance fee on
6 the '469 patent did not expire until May of 2010.

7 Petitioner had no notice of anything amiss and having no reason to check or remind
8 Nickey of these fees until 2008-2009, and having no written notice of a lapse in payment of fees.
9 As previously stated, all mailings went to another address (Declaration of Attorney Sean Casey).
10 There was no suspicion that the maintenance fees had not been paid as promised, multiple times,
11 by Nickey.

12 V. DILIGENCE UPON DISCOVERY OF NON PAYMENT

13 Petitioner, having no reason to check upon the patents, and no notice of their expiration
14 due to mailings elsewhere, only discovered that Nickey's representation that he was paying the
15 maintenance fees on the '836 patent and the '469 patent was false, in late 2008, since license
16 negotiations during that time had finally occurred and the status of the patents was checked upon.

17 Petitioner was diligent and took immediate action by contacting a new Patent Attorney,
18 Donn Harms, (Harms). When informed by Harms of the high standard required to have the late
19 fees accepted, Petitioner took immediate action to ascertain the facts and to find the plethora of
20 old correspondence and records in the matter that would be needed. Because of the number of
21 years that passed, and the number of people needed for contact to request any other records, this
22 task took a number of months to complete.

23 Petitioner in further diligence took the steps of Contacting Attorney Sean Casey (Casey)
24 seeking records of any kind in his possession. Sean Casey responded to the request only in
25 March of 2009 and confirmed:

26 a) After the '836 patent issued, Nickey stated to Casey, that he would be working with
27 Petitioner to maintain the '836 patent, among others, as well as any international patent
28 applications that were contemplated during the 1998 through 2001 period of time.

1 b) Nickey confirmed to Casey that Nickey would in the future attend to any needed action
2 for Petitioner's intellectual property matters.

3 c) That Nickey specifically stated, that in view of his economic and inventorship interests
4 in Petitioner's patents, that Nickey would attend to payment of maintenance fees for the
5 '836 and Petitioner's other U.S. patents.

6 d) That in early to mid-2004, Casey learned from a third party that Nickey may have
7 experienced serious health problems.

8 e) That pursuant to that information, Casey contacted Nickey and Nickey confirmed
9 he was in fact confronting serious health issues that impacted his ability to work.

10 e) That in the summer of 2008, Casey learned that Nickey had succumbed to his health
11 issues at the age of 57, and had passed away in June, 2008.

12 f) That in the summer of 2008, Casey also learned that Nickey's health problems
13 allegedly created adverse legal consequences for other entities or individuals who had relied on
14 Nickey for legal counsel and advice, and not just Petitioner.

15 g) That during all times between early 1998 and 2009 that Casey understood, from his
16 contact with Nickey, that Nickey, as one of Petitioner's co-inventors and acting in the capacity as
17 Petitioner's patent attorney, had retained and was executing his responsibility to maintain
18 Petitioner's U.S. patents in force.

19 h) That Petitioner would not have received any mailings from the PTO to alert Petitioner
20 to anything amiss in Petitioner's reasonable reliance on Nickey's performance since sometime
21 between about 2000 and late 2001 to early 2002, at Nickey's request and because of concerns
22 about mail going to Nickey's main employer, Cardinal Health, that Casey changed the
23 correspondence address for the '836 patent application to reflect the temporary address of
24 Casey's former law practice.

25 Consequently, Petitioner, who was located thousands of miles away from Nickey, could
26 not have ascertained anything amiss since all mailings from the PTO either were forwarded to
27 Casey's address, or, the address of Nickey at his former firm of Standley and Gilchrist.

28

1 As such, Petitioner would not have received any written notice of problems to put
2 Petitioner on notice that the promised actions of Nickey had not occurred. Further, Casey who
3 worked with, and who was geographically much closer to Nickey, and knew him well, had not
4 ascertained anything amiss with Nickey's behavior or health until the summer of 2008, nor had
5 any problem been created by Nickey for his client until that time. Petitioner, being across the
6 country, out of physical contact, and less frequently in personal contact with Nickey than was
7 Casey, could not therefor know of any problems of Nickey which would cause him to suspect
8 anything amiss in the handling of Petitioner's patents or maintenance of them. Thus Petitioner
9 had no inkling of any problems caused by Nickey to cause Petitioner to doubt his reasonable
10 reliance on Nickey's assertions that the patent maintenance fees were, in fact, paid.

11 Further to Petitioner's DILIGENCE on learning of the fee payment problem, and in an
12 effort to gather as much evidence of fact possible for this submission, Petitioner:

13 Contacted Attorney Raymond Erlach to see if he had any records and secured his
14 response regarding same. (Letter of Raymond Erlach of March 2009);

15 Contacted Standley Gilchrist, the former office of Nickey, seeking information to which
16 he received no answer as of this date;

17 Contacted Cardinal Health seeking to any records that Nickey may have left with them,
18 and to this date has received no answer;

19 Contacted the widow of Nickey seeking any records and any proof showing Petitioner
20 paid Nickey, and to which he has received no answer;

21 Searched his own stored records to find proof of his hospitalization in 2004, and his old
22 date books showing he indeed had hand-docketed the need to pay the future maintenance fees;
23 and;

24 Forwarded all such documents to Attorney Harms to aid in drafting this petition.

25 The immediate contact by Petitioner with all parties who might have information, and the
26 submission of this Petition, immediately after received answers from the parties from which
27 information was sought, and the immediate search through Petitioner's stored records of years
28 past showing payment to Nickey, and docketing of the fees in Petitioner's date books, evidences

- 1 the required DILIGENCE of Petitioner in seeking this relief as soon as possible after first
- 2 learning of the failure of Nickey to pay the maintenance fees as promised.

VI. CONCLUSION

Petitioner respectfully continues his assertion that he acted as diligently as possible under the existing circumstances, and that the facts herein support acceptance of the late payment of the fees on the '836 patent since those facts are well within the liberal standard as espoused by Commissioner Hall and Chief Justice Shepard in the *Mattullah* case.

8 Unavoidability, under 35 USC 41 and/or 35 USC § 133 as historically construed and
9 tempered by such cases as *Pratt*, *Mattullath* and *Ray*, supports a satisfactory finding in this case,
10 under the specific facts of the case as herein presented and documented.

11 For the reasons set forth in the records on file herein, inclusive of the testimonial and
12 documentary evidence on file and as filed herewith, it is respectfully submitted that the
13 Honorable Commissioner find that the facts meet the requisite threshold to find satisfaction that
14 there was unavoidable delay, despite the reasonable DILIGENCE of Petitioner to maintain the
15 '836 patent, thus permitting acceptance of fees and surcharges submitted concurrently herewith,
16 and ruling the '836 patent to be "considered as not having expired at the end of the grace
17 period."

VII. CONDITIONAL REQUEST REGARDING '469 PATENT

19 Petitioner, who is currently 79 years of age, additionally requests that should the
20 Commissioner find the facts herein support the allowance of payment of late fees for the
21 reinstatement of the '836 patent, that he be allowed to subsequently immediately submit
22 maintenance fees and surcharges for the reinstatement of the '469 patent. This is because the
23 facts and documentation herein support a holding that Petitioner exercised the same reasonable
24 DILIGENCE, due care, and same reasonable belief of the payment of the fees for the '469 patent.

Petitioner however, being of advanced age, and a declining source of revenue, had to budget for and amass the funds to pursue the '836 patent during the review of this petition for payment of the fees for the '469 patent.

1 This request is made in the interest of Judicial economy and the avoidance of the need for the
2 PTO Staff to docket and review of two separate filings with the same fact pattern supporting the
3 same reasonable belief of fee payment by Petitioner.

4 Consequently should the Commissioner find the petition allowing the payment of fees for
5 the '836 patent is acceptable, and this conditional request supported by the facts, the maintenance
6 fees due for the '469 patent can be deposited to Petitioner's Attorney's deposit account and paid
7 directly to the PTO, or can be paid by credit card to the PTO, if the Commissioner deems such
8 allowable.

9 As noted, the requisite fees due for the reinstatement of the '836 patent have already
10 been tendered with this request. Should any additional fees or costs be required in this matter,
11 please inform Petitioner's attorney and charge Deposit Account 07-1338.

12 Petitioner, through his attorney, respectfully requests that the Commissioner therefor
13 permit acceptance of fees and surcharges for the '836 patent, and if acceptable to the
14 Commissioner due to Petitioner's age and limited budget, that the fees and surcharges for the
15 '469 patent be also accepted if forwarded immediately, subsequent to a favorably ruling by the
16 Honorable Commissioner.

17 DATED: July 6, 2009

Respectfully submitted,

DONN K. HARMS, ESQ.,
Reg. No. 38,911
12702 Via Cortina, Suite 100
Del Mar, CA 92014
TEL: 858.509.1400
FAX: 858.509.1677

21 CERTIFICATE OF EXPRESS MAIL

22 I, the undersigned, hereby certify that this Response to Request for Information, and the
23 Declarations of Cheryl Adler and James Burnett are being deposited on this date in an envelope
24 as "Express Mail, Post Office to Addressee" mailing label number ET651043094US, postage
fully pre-paid, addressed to:

25 Mail Stop Petition
26 Commisioner for Patents
PO BOX 1450
27 Alexandria, VA 22313-1450

28 DATED: July 6, 2009

DECLARATION TO ACCEPT LATE PAYMENT OF MAINTENANCE FEE FOR
UNAVOIDABLE DELAY PURSUANT TO 37 CFR 1.378(B)

5

I, Pax Beale, declare as follows:

10 1. I am the sole inventor and sole owner of U.S. Patent No. 6,221,836 for Composition of pyruvate and anabolic protein and method for increasing fat loss in a mammal. The patent was originally issued April 24, 2001 [hereinafter said Patent or '836 Patent].

15 2. On April 24, 2005, unknown to me at the time, the '836 Patent expired for failure to pay the required maintenance fee, despite the assurances of Mr. Nickey, my attorney who had funds on deposit to pay the fee, that it would be paid along with the second maintenance fee on U.S. Patent No. 6118836 which was also due in May of 2005.

20 3. The delay in payment of the maintenance fee of said Patent was unintentional, despite my good faith efforts to ensure the timely payment of the maintenance fees. I reasonably believed Mr. Nickey's representation to me in March of 2005 by telephone, that he would pay the fees due on the '836 patent, and the second fee on the '469 patent. Mr. Nickey had previously indicated to me he would pay the first fee on the '469 patent, which he had done. So I had no reason to doubt him when I inquired about the first fee due on the '836 patent and the second fee due on the '469 patent and was told he would be paying them from funds I left in trust with him.

25 4. To wit:

4. I worked with attorney Don Nickey, who was Senior Patent Counsel with the law firm of Standley and Gilcrest, in the prosecution of the application for the '836 patent. Mr. Nickey confirmed his efforts in a number of letters, which is of referenced, initially, regarding a letter

from dated December 14, 1998. (Declaration Exhibit 1)

5. Mr. Nickey handled the prosecution of the '836 patent and was a recognized expert on the subject matter of the application. Over the number of years of prosecution, I paid Standley and Gilcrest on numerous occasions. In May of 2000, I forwarded over \$19,000 to Standley and Gilcrest. Some of it for prior work, but most of it on retainer. (Declaration Exhibit 2)

6. Mr. Nickey was successful in prosecuting the patent soon. Thereafter, and I was informed that it had been allowed in early 2001.

10

7. When the '836 patent issued, it was forwarded to me by my Attorney, Don Nickey, who was still working with the firm of Standley and Gilcrest at the time. As with my other patents, the ribbon copy was accompanied by a memo from Mr. Nickey, that maintenance fees were due to keep the patent in force. I remember that the letter indicated that the fees would be due between 3-3 1/2 years, 7 7/12 years, and 11-11 1/2 years after the date the patent issued. The letter also indicated that there were "drop dead" dates, as I call them, of 4 years, 8 years, and 12 years (subsequent to the issue date), where the fees could still be paid with a penalty.

20 8. At the time (about 2001), my protocol was to keep a written date book for my appointments during each year. At the end of each year, I make notations for events in upcoming years, that can't be put in the current year. In the days after reading the memo from Mr. Nickey, I remember that I entered reminders that the patent maintenance fees were due at the 3 1/2 year and 7 1/2 year and 11 1/2 year dates. I also entered a "drop dead" date of 4 years, 8 years, and 12 years.

25 9. I became aware in a telephone conversation about the time of issuance, that Mr. Nickey

would be leaving the law firm of Standley and Gilcrest, to take a position with Cardinal Health Corporation, as in-house counsel. Cardinal Health Corporation is a billion dollar per year drug distribution corporation. Mr. Nickey, having become a recognized expert on the subject matter of the patent, and having been an inventor on patent 836, wanted to continue handling the patent, and
5 my other matters after moving to Cardinal Health Corporation. He felt he could handle the minimal amount of work involved from his home office in his spare time. He also recognized I had invested a large amount of legal fees to orient him to my particular patent needs and times, and to shift to another patent attorney at that juncture, would be costly and horribly time consuming.

10

10. In May of 2001, I wrote to Mr. Nickey (Declaration Exhibit 3) to update him on a life-threatening illness I had suffered. I also reiterated from our telephone conversations, that I wanted him to continue handling my patent work, subsequent to his leaving his association with the Standley & Gilcrest firm to work for Cardinal Health. I felt it would be hard to replace his
15 expertise, and since the patent had issued, I felt he could handle matters for me easily, compared to the cost of finding a new alternate, new attorney.

11. I continued to suffer from severe health related problems during the rest of 2001 caused by a severe leg infection. Repeated infections caused numerous hospitalizations and
20 extreme, life threatening health issues. The post-op leg infection was the first of infections which hospitalized me several times in the subsequent years, including 2004-2008 (key renewal periods). Mr. Nickey had become a friend as well as my attorney, and we communicated by telephone, as I lived in San Francisco, and he lived in the Columbus, Ohio area.

25 12. In November of 2001, I wrote to Mr. Nickey to update him on my health problems,

and to confirm that per my letter of May 2001, that I trusted him completely, and was glad to have him continue to handle my patent legal work on the '836 patent and another patent. In the May of 2001 letter, I also confirmed that it was my understanding from our telephone calls and prior communications, that he was comfortable, and could easily handle all my patent needs. In our 5 phone conversations, we anticipated the legal work to be licensing advice if and when I was well enough to seek a licensee, and specifically paying the maintenance fees on the patents. Having worked with Mr. Nickey for a number of years, I trusted him implicitly to hold my funds for the future work. (Declaration Exhibit 3)

10 13. In January of 2002, I confirmed with Mr. Nickey, the substance of our previous telephone conversations. Specifically, I confirmed that he had been authorized to receive and hold my retainer funds after he left the law firm of Standley & Gilcrest, and became in-house patent counsel for drug distributor, Cardinal Health Corporation. These retainer funds, now in possession of my attorney Nickey, were in excess of \$19,000. I had given Standley & Gilcrest a 15 retainer for my legal work in May of 2000. (Declaration Exhibit 4)

14. In the January of 2002 Letter, I also confirmed my understanding of our phone conversations, Mr. Nickey would provide counsel to other attorneys involved in a lawsuit on the matter, and to handle all maintenance fees when they came due and advise me as to licensing.
20 (Declaration, Item 3, Exhibit 4).

15. Mr. Nickey and I spoke on the phone numerous times in the next few months, and he helped in explaining legal jargon and possible planning a defenses to some peripheral lawsuit matters, for guiding other attorneys on the case. (Declaration Exhibit 5) (Declaration Exhibit 6).
25 Mr. Nickey did insist that his work for me be "off the record" as he did not want to upset anyone

EXHIBIT A (page 4)

at Cardinal Health Corporation, or make them think he was working for me on company time. To my knowledge, he never did.

5 16. In September of 2002, subsequent to those telephone conversations with Mr. Nickey, there was one call in particular where Nickey subsequent to on call in particular where he noted again his concern about a potential conflict of interest with Cardinal Health Corporation . Yet he had a desire to continue with me. I wrote him another letter (Exhibit B to Petition) noting that we agreed that he wanted to continue advising me and my other attorneys, although it was mutually
10 understood he had full-time employment with Cardinal Health.

15 17. Also, in the September 2002 letter to Mr. Nickey, I confirmed that we had agreed in our previous phone conversations, that I had a positive retainer balance with Mr. Nickey, now estimated to be reduced to approximately \$10,000. This positive balance was from funds advanced to him by me, while he was at Standley & Gilcrest and from my funds, subsequently sent to him by his prior law firm of Standley and Gilcrest, after his departure. Again the original amount advanced by me as a retainer was \$19,000 (Exhibit B to Petition). At the time, I believe Mr. Nickey had the funds in his trust account, but years later, I came to find out he had health and dependency problems. In hindsight, I wonder if he had spent the money, and wanted to continue
20 so as not to have to return it. Why? Otherwise honest people with dependency problems do irrational things to support their dependency.

25 18. Additionally, in the September 2002 letter, I reconfirmed my understanding that Mr. Nickey would schedule, and pay the maintenance fees on the '836 patent. (Exhibit B to Petition, item 5)

EXHIBIT A (page 5)

19. In February of 2003 I wrote to Mr. Nickey to thank him for his continued help, in spite of his concerns about his position as in-house counsel with Cardinal Health Corporation. I felt his knowledge and expertise in the subject matter were almost impossible to replace.

(Declaration Exhibit 7)

5

20. In January of 2004, at the age of 74, I suffered another severe infection in Mexico (pneumonia). I was in and out of the hospital from 2004 to 2008. Mr. Nickey was a friend as well as my attorney by then. He had called me near one hospitalization incident, to cheer me up. During our phone conversation, I had referenced my date book for 2004, in which I entered the reminder note about a patent fee due. It indicated there was a fee or something due the patent office coming up on the '836 patent. I asked him if he had it handled, and he answered not to worry. The reason I can remember this so clearly is because in our phone conversation Mr. Nickey was trying to lift my spirits and had joked that, of course he had the maintenance fee handled, as he was the "Pyruvate King" and would never let me down. Pyruvate was one of the key components in my patent.

21. In a number of phone conversations, while I was recovering, we joked about him being the Pyruvate King. In July of 2004, I wrote to Mr. Nickey (Declaration Exhibit 8) to let him know I was on the mend, but that I had suffered a setback due to another infection. I made reference to our running joke.

22. On November 30, 2004, I wrote to Mr. Nickey, subsequent to a phone conversation, where he indicated he too was suffering some medical problems. During that phone conversation I again had noted to him that my date book indicated a fee was due in October, and I wanted to make sure that the Pyruvate King had handled it. In the same conversation, he had indicated that,

while he was ill, I should not worry, as he had everything handled regarding the my patents, and including any advice my other attorneys needed. I was not, to worry. In retrospect, upon information and belief, Mr. Nickey had dependency problems, which allegedly allowed him to distort the truth. In my November 30th, 2004 letter to Mr. Nickey, I informed him that my health 5 had gotten even worse. I was relying on him to handle everything on the patent, and provide advice, if needed , to the other attorneys. I also noted that I was unable to discuss any legal activity on matters he was handling, due to crippling hospitalizations and follow-up care, unless it was an emergency. I had no choice but to rely on him to handle everything. (Declaration Exhibit 11).

10

23. In mid-January of 2005, I again spoke with Mr. Nickey regarding an upcoming Bodybuilding event in Ohio. He had indicated he hoped to go to the event, and expected to see me there. During our phone conversation, I remember I had noted to him that I had a "drop dead" date in my date book for April 2005, and I joked that I wasn't sure if it meant me, or the two patents. 15 Mr. Nickey laughed. He also had indicated that he had everything handled and for me to get well, and not to worry that he would make sure both patent fees were paid on time.

24. Fast forward from 2004 to 2008. I had found out in late 2008, that Mr. Nickey had not paid the maintenance fee in 2004, and of course that meant that 2008 would also not have 20 been paid. Mr. Nickey was obviously either inadvertently mistaken, or lying to me at the time, or, in some fashion, his dependency was curtailing his ability to function. I'll never know, except retroactively I found out that his dependency had become an enormous problem. In that I resided in San Francisco, and Mr. Nickey in the Columbus, Ohio area, we weren't face to face, for me to observe his dependency problem personally. Allegedly, his dependency problem wasn't alcohol, 25 but drugs, and the origin of the drugs likely emanated from his medical problem. His medical

EXHIBIT A (page 7)

problem started late 2003, or in 2004. The medical problem was extremely serious, yet like so many with a gradual life-threatening problem, in telephone conversations, he obviously had moments of being functional, and completely coherent. Thus, I was oblivious at that time, about Mr. Nickey's illness and dependency problem. Logic said to continue to trust and rely on him.

5

25. Going back to January of 2006, subsequent to a phone conversation with Mr. Nickey, I wrote a memo to Mr. Nickey about still another an upcoming bodybuilding event in Columbus, Ohio. I noted I hoped to be healthy enough to attend, and I hoped to see him there. I also let him know the ongoing infections, that had almost killed me on earlier occasions, had impacted my heart. Mr. Nickey never told me in our January 2006 conversation that he had not paid the maintenance fee in 2004/2005, or that as a result, the patent had expired. Being gravely ill at the time, and having received nothing in the mail to the contrary, I relied on his statement in January of 2005, that he had paid the '836 maintenance fee.

10 15 26. We spoke on the phone occasionally over the next year, and in June of 2007, I sent Mr. Nickey a memo about my newly created Nonprofit organization, and its progress. In that memo, I also reaffirmed it was my understanding that he was to continue to pay any fees due from my retainer fund. I knew he still should have a reduced amount of retainer fees in his possession, albeit it now had diminished considerably. (Declaration Exhibit 9)

20

25 27. Now moving forward, in early 2008, I spoke with Mr. Nickey on the phone, and he was clearly not himself and made little sense. I wrote him a follow-up note on March 10th 2008, letting him know my concern. Since he had indicated he had paid the 3 ½ year maintenance fee, that was due in a window of time from 2004 to 2005, and since I had received no letters or notices to the contrary, and because I knew from my notes the next fee was not due till later in

EXHIBIT A (page 8)

2008, or at worst at the drop-dead date in 2009. I had no reason for concern at that time.

(Declaration Exhibit 10)

28. On March 16th, 2008 I wrote him again. Mr. Nickey had indicated in an earlier
5 conversation that he had potential conflict of interest concerns, and needed to keep a low profile.

(Declaration Exhibit 11)

29. Later in 2008, I began negotiations with a potential licensee of the '836 patent. It was
at that time in 2008, I first became aware, that Mr. Nickey, in spite of his numerous
10 representations that he had paid the 3 ½ year fee, had not actually done so. I also found out the
patent had expired in April of 2005, because he had not paid the fees, as he indicated in our prior
phone conversations.

30. I was shocked, as much as any time in my life. Aggravated, I set out to pursue Mr.
15 Nickey, and "blast him to the wall" verbally. In that I was in San Francisco, and he was in the
Columbus Ohio area, I could not grab him by the collar and rattle his brain. Yes, I was shocked,
but the real shock was yet to come. I promptly called Cardinal Health Corporation, where I had
been advised he still worked. I still didn't know if he was part time or full time, due to his on-
going health problems. The secretary reassured me I had the right number, and the correct
20 extension, but... "But what?" I asked. "I need to talk to him." There was a pause. The secretary
again reassured me that I had the correct number, but (after another pause) she said that Mr.
Nickey had died a few days prior. Don Nickey was dead. I cried. He had shown so much
fidelity to me, despite my being attacked legally by some major institutions in the business world.
In the end, "we" beat them all. See Ray Erlach Esq. letter (Declaration Exhibit 5). Whatever
25 went through Mr. Nickey's dependency driven mind, while he was ravaged by health problems in

EXHIBIT A (page 9)

his body, I'll never know. However, as focused as I was on my patent, Mr. Nickey's death dwarfed my focus. He was only 56, torn by demons, and he and I had become "blood". I could go on, but back to the issue at hand.

5. 31. I relied on Mr. Nickey's representations to me, between 2004 to 2008, that he had paid the maintenance fee and that he was handling everything related to my patents from my retainer. My guess was that the retainer had been reduced to about \$10,000. I was severely ill over that term, and constantly receiving hospitalization, and convalescing, and had no reason to doubt Mr. Nickey's statements to me that he had handled matters, when I asked him about it.

10

32. Finally, in 2008, I became aware that over the 2004-2008 period, when I suffered severe health problems, and multiple hospitalizations, that Mr. Nickey himself had in fact suffered severe health problems, which not only affected the work he did for me, but others also. He led one of the underling attorneys, Sean Casey, to believe he had to leave his job at Cardinal Health 15 Corporation, as early as 2004/2005. In reality, Mr. Nickey continued at least part-time, until well into 2008. I always assumed he worked continually at Cardinal Health Corporation. (Declaration Exhibit 6) I was shocked at the severity of Mr. Nickey's illness in 2008, but had been oblivious to it prior to 2008.

20 33. At all times during the 2004 to mid-2008 period, I relied on Mr. Nickey's representations to me. I had confirmed in memos to him, that he had paid the maintenance fee on the '836 patent from my retainer. I had no reason to doubt a registered patent attorney, nor were any Notices sent to me, that would cause me concern. During that period of time, I had hospitalizations, and was on continuous outpatient infusion treatment, and/or was rehабbing to

EXHIBIT A (page 10)

09/213968

 001RECEIVED
CENTRAL FAX CENTER
AUG 28 2009

thwart infection. I even concocted two dental infections, unrelated to my original hospitalizations.

34. Mr. Sean Casey, a registered patent attorney, was also under the belief from his 5 dealings with Mr. Nickey, that Mr. Nickey had the responsibility, and my funds, to pay the maintenance fees on my patent. Mr. Casey confirms also, that the mailing address for fee notices was an address, where I would not have received anything, that would notify me personally, that something was amiss.

10 35. As soon as I was informed, during the 2008 license negotiations, that my patent had gone abandoned, I contacted Patent Attorney Donn Harms about rectifying the problem. Mr. Harms explained to me that it would take a good showing to the patent office, that I had paid the fees to my patent attorney, and had been led to believe by my patent attorney that the fees were paid, and had no reason to doubt their payment.

15

36. I believe that the forgoing shows that Mr. Nickey in fact had the fees in his possession. Also, that our telephone conversations, which I confirmed with letters and memos, show that he told me on numerous occasions that he would pay the fees, and on numerous occasions, he told me that he did pay the fees. Further, being hospitalized and extremely ill over 20 the 2004-2008 period, I reasonably relied on the representations of Mr. Nickey as a Registered Patent Attorney, that he was handling my maintenance fees on the '836 patent.

37. Finally, the letter from Mr. Sean Casey, also a registered patent attorney, confirms that he too was under the impression that Mr. Nickey was at all times between 1998, well into

EXHIBIT A (page 11)

2008, acting to maintain the patents. I never received any mailings that would alert me to Mr. Nieke's mishandling of the matter, since the address for maintenance fees was changed.

38. I believe the forgoing shows clearly that I had reason to believe that I paid the
5 maintenance fees. Based on the docketed dates in my 2004 calendar, that on more than one occasion, I checked with my attorney to find out if he had paid the fees, and was told that the fees had been paid. I had no reason to disbelieve my registered patent attorney, and therefore, reasonably believed at all times until late 2008, the fees had been paid. This was based on the representations of a much respected, registered patent attorney. Only when I checked in 2008,
10 pursuant to a patent license negotiation, did I find out the truth, that they had not been paid. I was diligent thereafter, and immediately set about getting together the information herein, so that I could request my new patent attorney, Donn Harms, to file this petition. As such, I believe the facts constitute an unavoidable delay, pursuant to 37 CFR 1.378 (B), and respectfully request that the patent be reinstated.

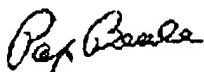
15

39. The undersigned being hereby warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, declares that all statements made herein of his own knowledge are true and all statements made on information and belief are believed to be true.

20

Dated: March 13, 2009

Respectfully submitted,



Pax Beale

25 Inventor and sole owner of US Patent 6,221,836

EXHIBIT A (page 12)

STANLEY'S GROCERY

195 Metro Place South
Suite 300
Santa Clara 95017
Telephone: (408) 792-0555
Fax: (408) 792-5134

December 14, 1998

VIA FEDERAL EXPRESS

Mr. Pax Beale
Bcale Medical Enterprises
1801 Bush Street, Suite 300
San Francisco, California 94109
(415) 563-0786

VIA FEDERAL EXPRESS

Mel Williamson
2351 North Watney Way, Suite C
Fairfield, California 94533
(707) 399-2520

Re: Continuation-In-Part Application of U.S. Patent Application Serial No. 08/951,547 Entitled: COMPOSITION OF PYRUVATE IN ANABOLIC PROTEIN AND METHOD FOR INCREASING FAT LOSS IN A MAMMAL
Our Ref: 1207-003/3

Gentlemen:

Enclosed you will find two copies of the above referenced Continuation-In-Part Application, an Oath and Declaration with tags for signing as indicated and an Assignment from Mel and myself to Pax. Mel, please sign as indicated on both the Oath and the Assignment.

Pax, you will find enclosed a Federal Express envelope addressed to Mel. Please place it with Federal Express as soon as possible after you have signed the Oath and retained one copy of the application. Mel, after you execute the documents enclose them in the Federal Express envelope addressed to me.

Hopefully, by Thursday of this week we can have the patent application before the United States Patent and Trademark Office.

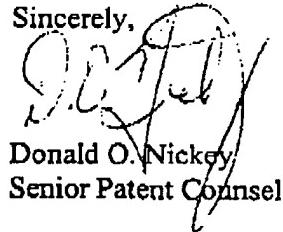
Once this is accomplished, I will forward the original Continuation-In-Part Application Serial No. 08/951,547 which received a Notice of Allowance on September 22, 1998. Pax, you might remember that that application claims a fairly specific human muscle protein composition. In contrast, this Continuation-In-Part Application adds additional formulations that have been supplied by Mel and also claims the method that Mel developed to calculate the human muscle protein composition.

Hopefully these instructions are clear and everything will go smoothly as we head towards the holiday season.

*Beale and Williamson
December 14, 1998
Page Two*

My regards to you and your families. Merry Christmas and a Happy New Year.

Sincerely,



Donald O. Nickey
Senior Patent Counsel

DON/br

enclosures

Exhibit 1 (2/2)

PAGE 4/30 * RCVD AT 8/28/2009 2:05:12 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-6/34 * DNI:2738300 * CSID:18585091607 * DURATION (mm:ss):04:30

SALOMON SMITH BARNEY

A member of citigroup
Elliott S. Barney

R# 00030870 00014640

Select Client FMA Statement 2000 Year End Summary

Page 8 of 11

BEALE RESEARCH CENTER, LLC

Account Number 598-26041-17 110

Tax ID number 94-3297611

Details of Deposits and Withdrawals 2000 - continued

Deposits - continued

Reference number	Date	Description	Amount
210005600	12/21/00	DEPOS RECEIVED AT 00846 - SAN FRANCISCO, CA NEW IMAGES	\$ 231.78 ✓
Total			

Withdrawals

Reference number	Date	Description	Referral number	Amount
220000100	12/25/00	FROM 598-26041-01 TO 598-00871-01		\$ 3,000.00 ✓

Exhibit 2 (1/2)

Summary of Expenses 2000

Checks Written

Summary of tracking codes
This chart shows the total amount of the checks you wrote for each of the following codes. Optional categories, defined by you, are available up to the letter Z.

Code	Type of expense	Total
Uncoded		

Listed below are checks written on your FMA.
Checking account number 1213374204

Sequence number	Check number	Date written	Date processed	Description	Amount	Sequence number	Check number	Date written	Date processed	Description	Amount
00000	05/12/00	05/12/00	CHECK ADJUSTMENT	\$ 10.00 ✓		00000	05/12/00	05/12/00	CHECK ADJUSTMENT	\$ 10.00 ✓	
22241526	01256	11/12/98	01/10/00	BUSH & OCTAVIA REALTY	750.00 ✓	22241526	01256	11/12/98	01/10/00	BUSH & OCTAVIA REALTY	750.00 ✓

SALOMON SMITH BARNEY

A member of citigroup

Ref: 0000000 00014441

Select Client FMA Statement
2000 Year End Summary
BEALE RESEARCH CENTER, LLC
Account Number 598-28041-17 110
Tax ID number 94-3297611

Page 7 of 11

H

Summary of Earnings and Expenses
Statement of Income and Expenses

Checking account number 1213374204

Uncoded

Sequence number	Check number	Date written	Date processed	Description	Amount

Exhibit 2 (2/2)

2000 YEAR END SUMMARY

797.25

29708628	01347	02/18/00	03/01/00	STANLEY & GILREST	✓
				80144	24801212

Pax Beale
1801 Bush Street Suite 303
San Francisco, CA 94109

Don Nickey, Esquire
8765 Colvin Drive
Plain City, OH 43064

May 1, 2001

Hi Don.

Fantastic - your son is not only on the Ohio State University football team, but playing regularly.

I follow football, and OSU is ranked in the top 5 routinely, so your kid can play the game. Maybe he can go "pro", and make more \$ than an attorney (hah!).

You know I was hospitalized March 9, 2001 on a Friday night, and it involved possible leg amputation, and heart flutter, all stemming from infection. And, the infection became rampant, because my surgeon left for the Caribbean after surgery, and failed to set up an "on-call" system to take his place in his absence.

I was admitted Sunday night as an in-patient through the emergency room by the ER orthopod. The orthopod discharged me the next morning, after he had not even seen me. Then the hospital reassigned him to me and he avoided me for three days (72 hours).

What's the point of being in an acute hospital if the physician is not going to see you every day?

Surgery was done about midnight the following Thursday, and completed at about 2:30AM to save my leg. You don't do midnight surgery by choice.

The orthopod was forced to do it by an infectious disease doctor, that Sophie had brought into the case.

More on that later.

I've had months of infection out-patient treatment.

Unrelated, I'm concerned about your potentially leaving the Standley & Gilcrest Law Firm, if you haven't left already, because you are my sole contact with pyruvate patents, and how to avoid infringement.

Exhibit 3 (1/2)

I wouldn't know Standley or Gilcrest, if I saw them, and they know "zip" about the supplement pyruvate, and less about protein.

Besides, I want to meet Robert Miller, Abbott Ross Corp. researcher, because he can guide me on work done on creatine pyruvate. There are about five other Abbott Ross researchers, but except for Dhason, all others are kind of fringe (parle, Cipollo, Houbion, and Luridell), for my purposes. Can you arrange a teleconference call?

Bottom line Beale says, "you" put my work into patent format, but you also used your experience involving all those researchers at Abbott Ross, and the University of Pittsburg Medical Center..

You know I've talked to Dr. Stanko of Univ. of Pitt., and he says you are literally the world's foremost authority regarding pyruvate, and more particularly, pyruvate and pyruvate/protein patents.

I know some routine stuff has been delegated to independent patent attorney Sean Casey.

Casey is sharp, quick of mind, enormously energetic, but he hasn't lived with pyruvate researchers at Pitt and Abbott Ross for years, as you have!

Net result: After Stanley and Gilchrist Law Firm, you could continue as my prime pyruvate patent attorney out of your home. You wouldn't be the first guy to do it. The routine work can be delegated to Sean Casey, Esquire. He could sit in a depo with me as well as you.

Regardless, let's talk and come up with a plan.

Your new position as In-House Counsel for Cardinal Health is dynamic, as they are burning up the NYSE, while old war horses like McKesson Robbins out here in SF seem to be treading water.

Obviously Cardinal Health won't want you doing work for me on their time, but that's where you delegate to Sean Casey, Esquire, who is in the convenience of your Ohio area, and also, Ray Erlach, Esquire, here in SF.

Let's get creative.

Onward and Upward,



Pax Beale

Beale Research Center LLC

Pax Beale
1801 Bush St. Suite 303
SF, CA 94109

Don Nickey, Esq.
8765 Colvin Drive
Plain City, OH 43064

January 24, 2002

Hi Don,

BINGO, I've got a great idea.

You are not a Bodybuilding "Lifer" like I am, but you know the Arnold Classic (primarily bodybuilding) Extravaganza is next door to your offices in Dublin, Ohio, and is actually in Columbus, Ohio.

The Arnold Classic is in a few weeks.

We could meet and confer....I want to "cement" our working relationship as we have discussed by phone. I can't afford to proceed down the "Pyruvate Path" without access to your pyruvate/protein knowledge.

I'm still weak from leg infection, but undaunted getting to the Arnold Classic because it will lift my spirits.

I'm glad you have agreed to be my attorney on pyruvate patent matters.

You should have my retainer from Standley & Gilcrest (S&Gil) law firm. I hereby authorize you to acquire and use it. Actually, I'd be surprised if you hadn't removed it, 'cause I gave it to you. S&Gil were only the conduit. Candidly, I don't know the status of my retainer.

Through telecom, we agree:

- 1-You will strategize on pyruvate patent lawsuits, if applicable.
- 2-You will coordinate with the attorneys "in the trenches", Sean Casey, Esq., and my local attorney, Ray Erlach.
- 3-Pay all fees and make submissions when due.
- 4-I don't like not having you as my attorney of record, but to accommodate your fear of a conflict of interest lawsuit, I agree.
- 5-You agree to handle the infringement accusations against me by the German chemical company DeGussa. I emphasize this is not a use patent allegation, but a manufacturing patent allegation.
- 6-You agree verbally to counsel with Casey, Esq., and Erlach, Esq.

Pax Beale, Beale Research Center LLC

1801 Bush Street, Suite 303, San Francisco, CA 94109, USA

Exhibit 4 (1/2)

Csey can continue to contribute, but you have to steer the ship.

The German Chemical Company (DeGussa) is asserting themselves with allegedly USA Patents. I don't think they are "Use Patents", but are patents to manufacture actual creatine pyruvate.

All we need is one more litigant in this mess.

One last hurdle.

Naïve as I have been in the Patent world, which marches to a different drum beat than most legal arenas, I've gone back in early 2000 (actually it was Dec. '99) and found payments to Stanley & Gilchrist, your law firm in the amount of \$15,823.67, and \$801.44 in 2000.

Upon information and belief, I paid \$10,000.00 for a retainer, and \$5,823.67 was for services already rendered by you.

For some inexplicable reason, I advanced another \$801.44 in 2000. That's over \$16,000.00! I have the check register for Beale Research Center to support the above payment conclusions.

Again, I'm confident that the aggregate payments included payment for services, so that the net of \$10,000.00 was the agreed upon retainer.

To reiterate, from memory, the \$823.67 was for services rendered that somehow got omitted in the original payment due to Stanley & Gilchrist's faulty billing system.

I guess S&Gil may have my retainer, and "zero" need for it.

You will need that retainer, as you have agreed to continue to render services to me.

You know S & Gil and if they still have my retainer, herein I authorize Standley & Gilcrest to advance the balance of retainer to you, which they have been holding in your behalf. The retainer should follow you. Show them this authorization.

We agreed, you would ask them to do it, 'cause you know them, and I don't know them at all. If this isn't your understanding, please advise.

Re: Arnold Classic, most anyone would like to be able to name a Sports Classic after "only their first name". The 'Pax Classic'! Sounds good to me. Schwartzneggar is toooooo much.

Confirm meeting at Arnold Classic, Columbus, Ohio in a few weeks.

Go Hard or Go Home.

Pax

EXHIBIT 5

RAYMOND NICHOLAS STELLA ERLACH

ONE MARITIME PLAZA, FOURTH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-3407
TELE: (415) 768-3382 FAX: (415) 768-3619

March 13, 2009

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Commissioner:

This office represented Pax Beale for many years in the United States District Court in patent litigation over patents and use claims involving pyruvate compounds.

Critical to that representation were the services of Don Nickey, Esq., who was licensed patent prosecutor par excellence. Mr. Nickey assisted Mr. Beale in his successful applications for multiple pyruvate method and use claims in multiple patents.

Mr. Nickey was the recognized patent expert in the United States in pyruvate patents; however, he had also previously represented virtually every major patent holder in the field. Mr. Nickey was reluctant to commit anything to writing, for fear of incurring a conflict of interest claim from his former clients, but I have firsthand knowledge that he was in charge of Mr. Beale's entire pyruvate patent portfolio, handling virtually every aspect of it from applications to maintenance, to resolving issues raised by examiners.

Mr. Nickey had previously represented, either directly or through Stanley & Gilbert, Abbott-Ross and its Abbott Laboratories, the University of Pittsburgh Medical Center, and through J. R. Stankay, M.D.; and possibly even the U.S. Armed Forces Hospital in Bethesda, Maryland. At one time or another, Mr. Nickey had advised all of these entities on pyruvate patent matters, and he was very sensitive to the potential for exposure to them as the field became increasingly litigious (see, for example, *Mea-Pro Industries, et al., v. Pax Beale, et al.*, in the United States District Court for the Northern District of California).

I spoke with Mr. Nickey several times on pyruvate patent matters, and each time he indicated he was in charge of formulating Mr. Beale's patent strategy and had crafted the applications and maintained the portfolio. I am not surprised, however, that he would not commit much in writing, due to his concern for conflicts claims being made against him by former clients.

Exhibit 5 (1/4)

LAW OFFICES OF

RAYMOND NICHOLAS STELLA ERLACH

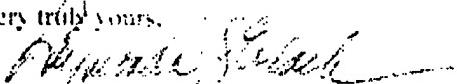
Commissioner for Patents
United States Patent and Trademark Office
March 13, 2009

Although I was trial counsel, Mr. Nickey assisted me tremendously in protecting Mr. Beale's patent claims in court, which by the way, resulted in a very successful settlement in Mr. Beale's favor.

Finally, I myself do no patent prosecutions and am not licensed to practice before the Patent Office. Although I was the pyruvate patent litigation "general" for Mr. Beale, Mr. Nickey was the man who handled Mr. Beale's interactions with the Patent Office, and he was the general and "brains" for the patent side. Sadly, he is now deceased.

I would be happy to personally discuss my knowledge of the foregoing matters if that would be helpful to Mr. Beale.

Very truly yours,



Raymond N. Stella Erlach

cc: Mr. Pax Beale

(pw: b (b) 6 (c) (3) (B) (C) (D))

DRAFT

February 19, 2009

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450

Re: _____

Dear Commissioner:

This office represented Pax Beale for many years in the United States District Court in patent litigation over patents and use claims involving pyruvate compounds.

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Mr. Nickey was the recognized patent expert in the United States in pyruvate patents; however, he had also previously represented virtually every major patent holder in the field. Mr. Nickey was reluctant to commit anything to writing, for fear of incurring a conflict of interest claim from his former clients, but I have firsthand knowledge that he was in charge of Mr. Beale's entire pyruvate patent portfolio, handling virtually every aspect of it from applications to maintenance, to resolving issues raised by examiners.

Mr. Nickey had previously represented, either directly or through Stanley & Gilcrest, Abbott-Ross and its Abbott Laboratories; the University of Pittsburgh Medical Center, and through it R. Stanko, M.D.; and possibly even the U.S. Armed Forces Hospital in Bethesda, Maryland. At one time or another, Mr. Nickey had advised all of these entities on pyruvate patent matters, and he was very sensitive to the potential for exposure to them as the field became increasingly litigious (see, for example, *Med-Pro Industries, et al. v. Pax Beale, et al.*, in the United States District Court for the Northern District of California).

I spoke with Mr. Nickey several times on pyruvate patent matters, and each time he indicated he was in charge of formulating Mr. Beale's patent strategy and had crafted the applications and maintained the portfolio. I am not surprised, however, that he would no longer be involved in the portfolio.

Exhibit 5 (3/4)

Commissioner for Patents
United States Patent and Trademark Office
February 19, 2009

cannot much in writing, due to his concern for conflict claims being made against him by former clients.

Although I was trial counsel, Mr. Nickey assisted me tremendously in protecting Mr. Beale's patent claims in court, which by the way, resulted in a very successful settlement in Mr. Beale's favor.

Finally, I myself do no patent prosecutions and am not licensed to practice before the Patent Office. Although I was the pyrotype patent litigation "general" for Mr. Beale, Mr. Nickey was the man who handled Mr. Beale's interactions with the Patent Office, and he was the general and "brains" for the patent side. Sadly, he is now deceased.

I would be happy to personally discuss my knowledge of the foregoing matters if that would be helpful to Mr. Beale.

Very truly yours,

DRAFT
 (m. d.c.)
Raymond K. Steele Etchach

cc: Mr. Pax Beale

JPS: E-09-commissionerpatents@

Sean Casey
1203 Dobbins Drive
New Albany, OH 43054

Tuesday, March 3, 2009

Pax Beale
1801 Bush Street Suite 303
San Francisco, CA 94109

Dear Pax,

This letter responds to your recent questions regarding U.S. Patent No. 8,221,836 B1 ("the '836 patent"), which expired due to a failure to pay the maintenance fee.

I understand the patent is subject to a petition to renew, and you have asked me to commit to writing my best recollection of the facts and circumstances surrounding the history of the '836 patent.

1. Since about mid-1998, I knew and communicated with your former patent attorney, Donald O. Nickey, regarding your intellectual property acquisition and protection activities.
2. From personal knowledge, Don Nickey was arguably a subject matter and intellectual property expert having specialized knowledge and expertise in the fields of technology art that included pyruvate and pyruvate/protein compositions and methods for use. To my knowledge, Don advised and counseled many individuals and entities across the United States in this particular field of technology.
3. From personal knowledge, I recall that he prepared and prosecuted U.S. patent applications for you and others in this field of technology. To the best of my knowledge, Don did so while working in Columbus, Ohio at Abbott Ross Laboratories and its successor in interest, Abbott Ross Nutrition prior to 1998.
4. Don continued in these pursuits thereafter when I worked with him on intellectual property matters for you and others. I worked with Don starting in about mid-1998 at the now dissolved Columbus, Ohio law firm of Standley & Gilcrest, where Don was a partner.
5. Don left Standley & Gilcrest for full time, in-house counsel employment with Cardinal Health of Dublin, Ohio. While he worked at Cardinal Health, Don continued to assist you and others in the noted area of technology, and I continued to support Don's activities.

Exhibit 6 (1/4)

PAGE 15/30 * RCVD AT 8/28/2009 2:05:12 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-6/34 * DNIS:2738300 * CSID:18585091607 * DURATION (mm:ss):04:30

6. Upon information and belief, sometime before 1998 and through sometime in about late 2001, Don wrote a series of patent applications involving the noted technology, which identified Don, you, and another as inventors. During that time, I continued to support Don's efforts to prosecute and issue those applications. One of those applications matured into the '836 patent.
7. Among other patent matters, I assisted you and Don with payment of the issue fee for the '836 patent.
8. After the '836 patent issued, Don stated to me he would be working with you to maintain the '836 patent, among others, as well as any international patent applications that were contemplated during the 1998 through 2001 period of time.
9. At all times, between 1998 and late 2001, and thereafter, Don was your lead patent attorney, and I only offered support when requested by Don to do so. The primary reason Don sought my support was that he needed a mailing address for his non-Cardinal patent prosecution activities, and also needed non-Cardinal related legal support on rare occasions when his duties at Cardinal Health consumed all of his time.
10. Subsequent to my limited support of Don's activities, Don informed me in late 2001 or early 2002 that he would attend to any needed action for your intellectual property matters. He specifically stated that in view of his economic and inventorship interests, he would attend to payment of maintenance fees for the '836 and other of your U.S. patents.
11. From that time in late 2001 to early 2002, I had no further contact with Don Nickey regarding any of your intellectual property matters, including your patents or patent applications, and the '836 patent.
12. To the best of my ability to recall, I believe that you may have paid me directly for services that I performed for Don to support his patent preparation, prosecution, and issuance activities that he undertook on your behalf.
13. Sometime in early to mid-2004, I learned from a third party that Don may have experienced serious health problems. Soon thereafter, I contacted Don and he stated that he was in fact confronting serious health issues that impacted his ability to work, and that required or would require him to leave his employment at Cardinal Health. During that conversation, Don and I only discussed his recent or pending imminent departure and issues related to his Cardinal in-house counsel duties and experiences.
14. I did not again speak with Don. In the summer of 2008, I learned that Don had succumbed to his health issues at the age of 57, and had passed away in June, 2008.

15. Upon information and belief, I also learned in the summer of 2008, that Don's health problems allegedly created adverse legal consequences for some entities or individuals who relied on Don for legal counsel and advice.
16. At about the same time in the summer of 2008, I also learned that you had confronted and eventually overcame nearly catastrophic serious health problems in the years between 2004 and 2008.
17. At all times between early 1998 and the present, I understood and believed that Don Nickey, as one of your co-inventors and acting in the capacity as your patent attorney, had retained responsibility to maintain your U.S. patents in force.
18. At all times between early 1998 and the present, I was not asked by Don Nickey to monitor or pay maintenance fees for your various patents, including the '836 patent.
19. Sometime between about 2000 and late 2001 to early 2002, at Don's request and with your authorization, I may have changed the correspondence address for the '836 patent application to reflect the temporary address of my former law practice. I understood that this address change was only for Don's convenience as he had left private practice at Standley & Gilcrest and was unable to receive U.S. Patent Office correspondence on your behalf while he was employed at Cardinal Health.
20. At all times between 1998 and the present, I have been registered to practice before the US Patent Office.

I hope this letter answers your questions regarding my best recollection of the facts and circumstances surrounding the '836 patent.

Best regards,


Sean Casey (m.d.c.)

Pax Beale

From: Sean Casey [scasey01@gmail.com]
Sent: Thursday, March 05, 2009 11:35 PM
To: 'Pax Beale'
Subject: RE: 20090303 ltr Caseytobeale re Nickey.doc

McLissa – please sign my name with your initials. Thanks!

Pax & Sophie – I am amused that you are in Columbus and I am out west. Despite the cold, I wish I was there -- it's a great time. It's not too bad though since the weather warmed up a little bit.

Exhibit 6 (4/4)

PAGE 18/30 * RCVD AT 8/28/2009 2:05:12 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-6/34 * DNIS:2738300 * CSID:18585091607 * DURATION (mm:ss):04:30

Pax Beale
1801 Bush St. Suite 303
San Francisco, CA 94109

Don Nickey, Esq.
8765 Colvin Drive
Plain City, OH 43064

February 23, 2003
US Mail

Hi Don,

I wanted to recap our version against the German Chemical Company's (De Gussa) alleged patent position, on a manufacturing patent.

De Gussa says they have a patent application, and the application date is the commencement date of the patented infringement, if patent is approved. You agree.

De Gussa says they have a patent for "chemically bonded" creatine pyruvate.

De Gussa claims creatine pyruvate is superior to the mineral salts of pyruvate. As you know, the mineral salts were the basis for all the patents of the University of Pittsburgh Medical Center's, US Armed Forces Hospital's, and my original research.

I was using the mineral salt of pyruvate (typically calcium), and then shifted to creatine instead of calcium to make creatine pyruvate.

I have entered into an agreement with a small chemical company in Louisiana for production.

You are aware creatine pyruvate is made from chemically bonding creatine monohydrate with pyruvic acid for a chemically bonded product.

In order to avoid potential infringement issues, we are now producing creatine pyruvate using our method of mechanically bonding the product, producing creatine/pyruvate. Per your suggestion, we always use the "forward slash" in the name, because in the trade the forward slash doesn't imply a chemical bond, e.g. what De Gussa's patent allegedly claims. You agree.

I know it's awkward to give me legal advice, while working full time at Cardinal Health, but you don't go broke making "money", and I genuinely appreciate it.

I've talked to so many attorneys about pyruvate/protein. I can't count them.....attorneys on my side and the opposing side. I find I'm correcting them, based on what I've absorbed from you.

Exhibit 7 (1/2)

You are in essence my patent department in our supplement/web site business.

Now you can say you are in-house counsel at Cardinal Health, and Beale Research Center! I joke.

I don't joke when I say I rely on you.

Thus, De Gussa originally claimed my "product" creatine pyruvate in the US was infringing with their patent. However, they are stymied with my creatine/pyruvate mechanical blend. They are in a quandary, and you say Beale Research Center, LLC, is not infringing.

I agree creatine pyruvate and creatine/pyruvate are superior, plus it avoids the mineral salt pyruvate (use patent) infringement issue from the University of Pitt. Medical Center, the Armed Forces Hospital, R. Stanko, M.D., and the licensee MedPro Industries.

I think you are over sensitive about a potential conflict of interest law suite from the above named parties.

I see no reason at this juncture to delegate the De Gussa infringement assertion to either Ray Erlach in SF, or Sean Casey in your Ohio area.

Regards,


Pax

Pax Beale
1801 Bush St. Suite 303
San Francisco CA 94109

Don Nickey, Esq.
8765 Colvin Drive
Plain City OH 43064

July 10, 2004

Hi to the "Pyruvate King",

You may be the "Pyruvate King", but if you notice on my patents my middle initial is 'K', as I am the real King. My mother's maiden name was King.

Seems like all is quiet on the manufacturing patent involving DeGussa. I've verbally argued your strategy, but they still make threats, although they have soften.

The huge on-going "use patent" infringement lawsuit (six years, ugh!) kept us in constant contact, but with the lawsuit history, patents issued, there's a little tranquility in my life. I have to make it an exception for my health problems, and rumor has it you have a few also.

You are aware I came back from Mexico in January of this year and when I go to L.A. was rushed to UCLA Hospital with pneumonia and atrial flutter..

I think of pneumonia as a bad case of the flu, but then I find out older people frequently can't cope with it, and it is a common cause of death.

I'm 72, strong as hell in the gym, but I was one sick dude with that pneumonia. Makes the flu look like the sniffles.

Worse yet, the business suffers when the "Ole Bealer" isn't present, so it's like having to start all over again.

It's not the loss of weeks in the hospital, it's the lost time recovering at home, and getting strength back. Takes months, not weeks at 72!

By coincidence my prior hospitalization for potential leg amputation involved infection, just as did the pneumonia/atrial flutter hospital admission.

Exhibit 8 (1/2)

PAGE 21/30 * RCVD AT 8/28/2009 2:05:12 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-6/34 * DNIS:2738300 * CSID:18585091607 * DURATION (mm:ss):04:30

Strangely, I'm back in the gym, but I'm constantly out of breath in every day activity, and I can't even run around the block. You remember, I told you I've run over thirty, twenty-six mile, 385 yard marathons. Not now. No way, Jose.

Something is wrong with me, and I am not a "cry baby". I don't feel bad every day....but then guess what?

I now have infection related to gum surgery! It's not as burdensome as the leg infection, or the pneumonia infection accompanied by atrial flutter, but it is no picnic.

What's worse I can't lift the weights, and I've had as fantasy of a comeback. I've beaten all the guys in my age group, and the one below mine.

I humor myself into the idea, I'm still National Champion, and all I've done is loan out my title to others who win it in my absence.

There is no law against fantasizing, and in your language, no patent on it.

Need to talk to you. Please call 415, 563-0786.

Onward & Upward,



Pax

1801 Bush St. Suite 302
San Francisco, CA 94109

PH: 415.563-0786 FAX: 415.563-1467

**BODY FOR THE
AGES NONPROFIT**

Fax

FAXED
6/12

To:	Don Nickey, Esq.	From:	Pax Beale
Fax:	614.757-5000	Pages:	1
Phone:		Date:	6/12/07
Rec:	Big Changes	CC:	

Urgent For Review Please Comment Please Reply Please Recycle

• **Comments:** Don,

• Update: persistence overcomes resistance. I'm down, but not out.
Again, I start business, like a start-up again.

Big changes. XAP label is formally dead. It's now Body for the Ages Nonprofit, and it will be a 501(c)3 I.R.S. designated nonprofit. More on the logic of that later on. Have donation commitment from Charles Schwab. Money is nice, but association is better. One attorney is in for \$10,000.00, another for \$4,900.00 and stock broker is in for \$1,000.00.

If I could get all the attorneys, who have been involved in pyruvate patents to put in a \$1,000.00, we would have it "made in the shade".

- Lots of coming work and responsibility: (Don Nickey DN) (Pax Beale PB)
- new label text approval (DN)
- new contract manufacture (PB)
- new name (PB)
- legal approval of new website text for www.bodyfortheagesnonprofit.org (DN)
- gigantic project to build the new website (PB)
- potential PBS TV gig: A TV special is budgeted and planned (PB)
- our products will be dependent on -836B1 and -252 (DN)
- continued fee payment out of retainer to governmental agencies (DN)
- our Nonprofit Corporate message is: the public understands our passion to help all live to their maximum genetic lifespan. Most don't. This message has been submitted to the IRS to give us our nonprofit status (PB)

It's phone time.

Pax

Exhibit 9

Handy For The AA & NA Addict

FAXED

March 10, 2008

Don,

You were not making sense on the phone.

I'm told rumor has it you have a serious medical problem. Take care of yourself.

I don't pull punches. Heard you are boozing heavily and that is nonsensical.

I've operated an AA inpatient hospital treatment center in a hospital I owned in Oakland, Calif., and I know from first hand experience, life style changes are very difficult to implement. We had a saying at the hospital, which I believe to be valid.

"If you slide off the sobriety train after you commit, that's not failure. Failure is when you don't pick yourself up, and get back on the sobriety train".

My friend, if you have an addiction, confront it. Admit it. Show guts. Beat it. Defeat it.

Support comes from the outside, but the solutions come from your own intestinal fortitude.

Go for the Gold.

Your friend,



Pax

P.S. It's OK to be a pyruvate addict, but not an alcohol addict.

Handy For The AA & NA Addict

1000 Market Street, Suite 1000, San Francisco, CA 94103-3432 • (415) 956-1700 • Fax: (415) 956-1701

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Exhibit 10

PAGE 24/30 * RCVD AT 8/28/2009 2:05:12 PM [Eastern Daylight Time] * SVR:USPTO-EFXRF-6/34 * DNIS:2738300 * CSID:18585091607 * DURATION (mm:ss):04:30

FAXED
2008

March 16, 2008

Don,

I'll be short and sweet.

I'm going to launch again, because I was not beaten by the market, I was beaten a parade of illnesses.

Launch this time involves "Online Wellness Program", which is a wellness philosophy a person can subscribe to through our www.bodyfortheages.org website. It's solely available through the Web.

Incorporated into becoming a member of Team Body for the Ages through our online wellness program, are our products based on patent # 6221836B1, and #6008252.

Collectively we agree:

- 1-Your approval of our .Org website text, involving our Online Wellness Program format. (DN)
- 2-I've incorporated the Body for the Ages Nonprofit myself, and with pride I have 100% IRS approval. I saved thousands doing all the legal work myself. (PB)
- 3-You approve all the text on www.bodyfortheages.com. (DN)
- 4-I'm implementing the slow process to build the new upgraded web sites. (PB)
- 5-We agree to disagree on your fear of a conflict of interest lawsuit, but I will still adhere to your preferred protocol. Don, the pyruvate use patent lawsuits are "yesterday's newspaper".

Go Hard or Go Home



Bx Reader

(Pax)

Exhibit 11

Pax Beale
1801 Bush St. Suite 303
SF, CA 94109

Don Nickey, Esq.
8765 Colvin Drive
Plain City, OH 43064

September 1, 2002

Hi Don. I've been reading up on your new positions, as in-house patent attorney for Cardinal Health Corp.

Cardinal Health is big-time in drug distribution. Should keep you active. Remember I owned a drug wholesaler also-super small by comparison.

I know you don't like to commiserate in writing, 'cause I think you have an unfounded fear that by representing me, you expose yourself to legal assaults from Med-Pro. R Stanko, MD, and maybe one by Pitt. Medical Center, and/or Abbott!Ross re: conflict of interest.

I know you fear MedFro, but Dr. Stanko wouldn't sue his mother. I am friendly with adversary Univ. of Pitt., and my interests are too small for your old employer, the multi-billion dollar a year Abbott!Ross to care about a "conflict of interest".

Nonetheless, I appreciate periodic phone calls, and meeting you at Arnold Classics in Ohio is just great!

You are a pivotal foundation to my business.

Here is what we have agreed upon:

1-You are monitoring my patents.

2-Both -252, and -836B I are vital to me.

3-Sean Casey, Esq. says he paid some fees for one other patent, but you agreed -252 and -836B I are your 'babies'. I agree and I rely upon it. You are the expert.

4-You by now have your retainer advanced to you from your old law firm of Standley & Gilcrest (so I'm told), of which after payment of service, you agree I have a balance of an "advanced" to you of \$10,000.00.

5-Fees to date to US Patent & Trademark Office have been for a variety of reasons, and candidly, I don't know when or what fees are due, e.g. application, issuance, renewal or whatever. You agree you will run herd over all these government mandatory fees, and make payment from my retainer.

6-Plus, you commit to do legal work on our product labels.

7-You are "my man in Havana", and I appreciate your managing my patents, and you acknowledge possession of my advance I gave you through your old law firm of

EXHIBIT B (page 1 of 2)

Standley and Gilcrest.

8-You will also coordinate Erlach, Esq. and Casey, Esq., and be their technical advisor on patent related legal issues.

9-You will assign all patents to me that may have involved your name with mine as a co-inventor.

10-We agree you don't own Beale Research Center, LLC, XAP product label, patents issued to me, my web site, (Body for the Ages.Com) nor any related entity or product that might emerge in the future. without an expressly created and signed statement accordingly.

By the way, did you irritate S & Gil law firm when you left. because when I talked to them they bordered on being rude.

They basically said I was your client, and the firm in general had "zip" to do with me.

I'm relying on you to tell me if the above is not our agreement.

More later,


Pex

EXHIBIT B (page 2 of 2)

Engagements 2001



THE METROPOLITAN MUSEUM OF ART

EXHIBIT C
(page 1 of 8)

2003 2004
December-January

Dec 26 STOP

STOP Nov 26 after 7 AM PST
Spec due 17 days back
STOP Dec 31 after review

Start

29 Monday

Carryover: Check Patent
Fee due in New Year
about 10/08 Dec 31

469 NOT due until

30 Tuesday

CD 1/1/26/05
Note: File Pay B-4 10/04
& avoid Surecharge.

Note: Check out

31 Wednesday

Arnold Glasser
Atlas on COLUMBIA
3rd floor, Rutherglen, MA

Thursday 1
New York City

Friday 2

Saturday 3

Sunday 4

EXHIBIT C
(page 2 of 8)

April

12 Monday Easter Monday (Carnival)

71/76
232 Broads

13 Tuesday 9:00 Party Early 9:30 - 9:45

Thursday 15
 1 - 2:00 WORK
 2:40 DANCE
 4:30 PM 11
 Sat 11:30 AM
 Call MICHIGAN CONVENTION 7:00 10:00
 Payment Date 8:00
 Start 4/24/09 6:00 Friday 16

14 Wednesday

2:00
2nd Movie 1PM
~~30~~
30 Brian
Laurie
GUESTS

Bxiliel Brown man Saturday 17
 Masonic
 noon - Joe Waddell
 2 4318-723-127
 Flat Magazine photos

Sunday 18

EXHIBIT C

(page 3 of 8)